

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7508

Petition of Georgia Mountain Community Wind, LLC,)
for a Certificate of Public Good, pursuant to 30 V.S.A.)
Section 248, authorizing the construction and operation)
of a 5-wind turbine electric generation facility, with)
associated electric and interconnection facilities, on)
Georgia Mountain in the Towns of Milton and Georgia,)
Vermont, to be known as the "Georgia Mountain)
Community Wind Project")

Order entered: 8/6/2010

**ORDER RE MOTION FOR RECONSIDERATION AND
PROPOSED SCHEDULE RE SET-BACK REQUIREMENTS**

Introduction

On June 11, 2010, the Public Service Board ("Board") issued an Order and Certificate of Public Good ("CPG") to Georgia Mountain Community Wind, LLC ("GMCW") in this docket.

On June 25, 2010, Daniel FitzGerald filed a Motion for Reconsideration and represented that the motion was supported by the "Landowner Intervenor"¹ in this proceeding. On July 21, 2010, the Landowner Intervenor filed additional comments and confirmed that each of them supports the Motion for Reconsideration.

In this Order, we deny the Landowner Intervenor's Motion for Reconsideration and direct GMCW to provide a proposed schedule for proceedings in order for the Board to determine an appropriate set-back distance from the base of the Project's turbines to the adjacent property lines.

1. Daniel and Tina Fitzgerald, Kenneth and Virginia Mongeon, Kevin and Cindy Cook, George A. and Kenneth N. Wimble, Scott and Melodie McLane, Matthew and Kimberly Parisi, and Jane and Heidi FitzGerald (collectively, "Landowner Intervenor").

Landowner Intervenor's Motion for Reconsideration

The Landowner Intervenor request that the Board reconsider four aspects of our decision in this proceeding. The Landowner Intervenor assert that a CPG should not be issued until the set-back distance from the turbines to the adjacent property lines is determined. In addition, the Landowner Intervenor request that the Board reconsider the provisions in both the Georgia and Milton Town Plans and find that the Project would be in violation of clear, written community standards. Third, the Landowner Intervenor maintain that GMCW has not provided evidence that it has complied with the noise monitoring requirement in 30 V.S.A. § 248(o). Finally, the Landowner Intervenor request that the Board modify Ordering Paragraphs No. 22 and 23, regarding the maximum allowable noise levels associated with project operations, to limit the indoor sound levels at any "home school structure" to a maximum level of 30 dBA.

Petitioner's Response

On July 12, 2010, GMCW filed a response to the Motion for Reconsideration. GMCW asserts that the Board "has on numerous occasions determined placement of electrical facilities in the post-CPG process, particularly in the context of siting high-voltage transmission." GMCW maintains that the Landowner Intervenor did not provide any factual or legal basis that would warrant different treatment for this Project. GMCW also contends that the Landowner Intervenor failed to advance any new legal or factual basis to support the request for reconsideration on the issues of "local plans and noise."

No other party filed comments on the motion.

Discussion

The Landowner Intervenor request that we reconsider the issuance of the CPG because the set-back distance from the turbines to the adjoining property lines has not yet been determined. The Landowner Intervenor assert that the Board cannot find that the Project, as currently proposed, satisfies the criteria set forth in 30 V.S.A. § 248(b).

In our June 11 Order, we concluded that the Project would not have an undue adverse impact on public health and safety conditioned on our determination of a reasonable set-back

requirement.² We emphasize that this conclusion is predicated on the ability of GMCW to demonstrate reasonable set-back distances for the turbines during the post-CPG proceedings. Furthermore, the Vermont Supreme Court has reviewed the Board's use of post-certification procedures and has affirmed that such procedures are "an accepted practice of the Board and administrative tribunals generally."³

As we stated in our June 11 Order, we will conduct additional proceedings to determine an appropriate set-back distance from the turbines to the adjacent property lines; all parties to this Docket will have the opportunity to participate in those proceedings. Based on the outcome of that proceeding, some aspects of the Project plans may need to be revisited. However, consistent with Board practice, GMCW must address the relevant Section 248(b) criteria and demonstrate that there will be no negative impacts of its set-back proposal on potentially impacted criteria. If we determine that the Project cannot be redesigned to accommodate a reasonable set-back requirement and comply with the criteria of Section 248(b), GMCW will not meet the condition required in the June 11 Order and will not be able to construct the project. Accordingly, we are not persuaded that we should change our determination and revoke GMCW's CPG for the Project.

The Landowner Intervenor also request that the Board reconsider our determination that the applicable Town Plans contain no clear, written community standards with which the Project would be inconsistent. The purpose of a motion for reconsideration is for the Board to reconsider "issues previously before it," and to "examine the correctness of the judgment itself."⁴ The Landowner Intervenor have not provided any new basis or argument that was not previously considered in our June 11 Order. Our conclusion that the Project would not be in violation of clear, written community standards is supported by the evidence in the record and we find no

2. Order of 6/11/10 at 29 and 33.

3. Docket 7250, Order re Motion to Amend, 7/17/09 at 4, citing *In re Amended Petition of UPC Vermont Wind, LLC, for a Certificate of Public Good, Pursuant to 30 V.S.A. § 248, et. al.*, 2009 VT 19, ¶ 7; *Petition of Vermont Electric Power Company, Inc.*, 131 Vt. 427, 435 (1973).

4. *In re Robinson/Keir Partnership*, 154 Vt. 50, 54 (1990); see also, *In re Verizon Wireless*, Docket 6651 Order of 10/6/06 at 2.

basis in the Landowner Intervenor's filing to conclude that our June 11 decision was incorrect. Accordingly, we deny the Landowner Intervenor's motion on this issue.

In their motion, the Landowner Intervenor contends that GMCW has not provided evidence that it has complied with the noise monitoring requirement in 30 V.S.A. § 248(o). Section 248(o) provides:

The board shall not reject as incomplete a petition under this section for a wind generation facility on the grounds that the petition does not specify the exact make or dimensions of the turbines and rotors to be installed at the facility as long as the petition provides the maximum horizontal and vertical dimensions of those turbines and rotors and the maximum decibel level that the turbines will produce as measured at the nearest residential structure over a 12-hour period commencing at 7:00 p.m.

Thus, Section 248(o) requires that petitioners provide the maximum dimensions and noise levels of the turbines, in effect the "worst case scenario," to allow the Board to evaluate aesthetic and noise impacts.

The Section 248(o) provision is procedural in nature and we read it as a constraint on the Board's ability to deny a petition as incomplete. The proceedings in this docket involved significant testimony and cross-examination regarding the maximum noise levels that will be produced by the project turbines. GMCW provided sufficient evidence to allow us to examine the potential "worst case scenario" noise impacts of the Project on public health: GMCW conducted sound-modeling analysis and demonstrated that the "worst-case" modeled sound level at the nearest homes to the Project site is 40 dBA. The noise isoline map shows projected noise levels at all of the surrounding residences.⁵

Furthermore, our approval of the Project is conditioned on GMCW's compliance with maximum allowable noise levels.⁶ Ordering Paragraph No. 22 provides that the Project-related sound levels "at any existing surrounding residences do not exceed 45 dBA(exterior)(Leq)(1 hr) or 30 dBA (interior bedrooms)(Leq)(1 hr)." These requirements apply to all surrounding residences regardless of the distance from the residence to the Project. Accordingly, should the

5. *See*, exhibit Petitioner-KHK-2 at 17.

6. We note that if the Project is redesigned to accommodate the set-backs, GMCW must demonstrate that the projected noise levels will meet the conditions described in our June 11 Order.

Project exceed the maximum prescribed sound level at any residence, GMCW would be in violation of its CPG. Given that we require GMCW to comply with these noise standards regardless of the location of a residence, we conclude that the Landowner Intervenor have not provided a sufficient justification for altering our June 11 Order.

The Landowner Intervenor request that the Board modify Ordering Paragraphs No. 22 and 23, regarding the maximum allowable noise levels associated with project operations, to include a condition that the indoor sound levels at any "home school structure" not exceed 30 dBA. However, a "home school structure" already falls within our consideration of maximum noise levels because the education occurs in "homes," or "residences," and GMCW must comply with the noise requirements at each of those "residences." Accordingly, we see no need to alter our June 11 Order in this regard.

Proposed Schedule for Set-back Requirements

In our June 11 Order, we required GMCW "to incorporate into the proposed Project design an appropriate set-back distance from the adjacent property lines."⁷ We concluded that "a condition requiring GMCW to place the turbines a reasonable distance away from a property line is appropriate to mitigate potential public safety risks associated with ice throw and collapse"⁸ and indicated that the Board would conduct additional proceedings to determine an appropriate set-back distance.

We direct GMCW to file a proposed schedule for these proceedings and encourage GMCW to work with the other parties to this docket to develop a joint schedule. GMCW may choose to provide its proposal for a reasonable set-back distance, including evidence in support of its proposal, at the time it files a proposed schedule. We urge GMCW to fully address our concerns in its initial filing to ensure this matter proceeds in a timely fashion. If we do not receive sufficient evidence, the proceeding will be unnecessarily delayed. The proposed schedule must include opportunities for other parties to respond to GMCW's proposal.

7. Order of 6/11/10 at 87.

8. Order of 6/11/10 at 33.

GMCW should file its proposed schedule by August 27, 2010. Alternatively, GMCW must file a status report on this matter by August 27, 2010.

SO ORDERED.

Dated at Montpelier, Vermont, this 6th day of August, 2010.

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|-------------------------|---|----------------|
| <u>s/ James Volz</u> |) | |
| |) | PUBLIC SERVICE |
| |) | |
| <u>s/ David C. Coen</u> |) | BOARD |
| |) | |
| |) | OF VERMONT |
| <u>s/ John D. Burke</u> |) | |

OFFICE OF THE CLERK

FILED: August 6, 2010

ATTEST: s/ Susan M. Hudson
Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)